

THE HONORABLE JOHN C. COUGHENOUR

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DOUGLAS STREETER,

Plaintiff,

vs.

PERKINS AND WILL, INC., AND DOES
1-25, INCLUSIVE,

Defendants.

NO. C20-1325-JCC

**STIPULATED ORDER REGARDING
ELECTRONICALLY STORED
INFORMATION**

I. STIPULATION

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information (“ESI”) in this matter:

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible.

1 **B. ESI Disclosures**

2 No later than August 18, 2021, each party shall disclose:

3 1. Custodians. The five custodians most likely to have discoverable ESI in their
4 possession, custody, or control. The custodians shall be identified by name, title, connection to
5 the instant litigation, and the type of the information under the custodian's control. The parties
6 agree that an additional two custodians may be added if necessary after a review of the initial
7 ESI production.

8 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g., shared
9 drives, servers, databases), if any, likely to contain discoverable ESI.

10 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to
11 contain discoverable ESI (e.g., third-party email providers, mobile device providers, cloud
12 storage, cloud-based applications, cloud-based databases, social media accounts, messaging
13 applications, etc.) and, for each such source, the extent to which a party is (or is not) able to
14 preserve information stored in the third-party data source.

15 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable
16 ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically
17 identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P.
18 26(b)(2)(B).

19 **C. ESI Discovery Procedures**

20 1. On-site inspection of electronic media. Such an inspection shall not be required
21 absent a demonstration by the requesting party of specific need and good cause or by
22 agreement of the parties.

23 2. Search methodology. The parties shall timely confer to attempt to reach
24 agreement on appropriate search terms and queries, file type and date restrictions, data sources
25 (including custodians), and other appropriate computer- or technology-aided methodologies,
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1 before any such effort is undertaken. The parties shall continue to cooperate in revising the
2 appropriateness of the search methodology.

3 a. Prior to running searches:

4 i. The producing party shall disclose the data sources (including
5 custodians), search terms and queries, any file type and date restrictions, and any other
6 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable
7 information. The producing party may provide unique hit counts for each search query.

8 ii. The requesting party is entitled to, within 14 days of the
9 producing party's disclosure, add no more than 10 search terms or queries to those disclosed by
10 the producing party absent a showing of good cause or agreement of the parties.

11 iii. The following provisions apply to search terms / queries of the
12 requesting party. Focused terms and queries should be employed; broad terms or queries, such
13 as product and company names, generally should be avoided. A conjunctive combination of
14 multiple words or phrases (e.g., "computer" and "system") narrows the search and shall count
15 as a single search term. A disjunctive combination of multiple words or phrases (e.g.,
16 "computer" or "system") broadens the search, and thus each word or phrase shall count as a
17 separate search term unless they are variants of the same word. The producing party may
18 identify each search term or query returning overbroad results demonstrating the overbroad
19 results and a counter proposal correcting the overbroad search or query.

20 b. After production: Within 21 days of the producing party notifying the
21 receiving party that it has substantially completed the production of documents responsive to a
22 request, the responding party may request no more than 10 additional search terms or queries.
23 The immediately preceding section (Section C(2)(a)(iii)) applies.

24 c. Upon reasonable request, a party shall disclose information relating to
25 network design, the types of databases, database dictionaries, the access control list and
26 security access logs and rights of individuals to access the system and specific files and
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1 applications, the ESI document retention policy, organizational chart for information systems
2 personnel, or the backup and systems recovery routines, including, but not limited to, tape
3 rotation and destruction/overwrite policy.

4 3. Format.

5 a. ESI will be produced to the requesting party with searchable text, in a
6 format to be decided between the parties. Acceptable formats include, but are not limited to,
7 native files, multi-page TIFFs (with a companion OCR or extracted text file), single-page
8 TIFFs (only with load files for e-discovery software that includes metadata fields identifying
9 natural document breaks and also includes companion OCR and/or extracted text files), and
10 searchable PDF.

11 b. Unless otherwise agreed to by the parties, files that are not easily
12 converted to image format, such as spreadsheet, database, and drawing files, will be produced
13 in native format.

14 c. Each document image file shall be named with a unique number (Bates
15 Number). File names should not be more than twenty characters long or contain spaces. When
16 a text-searchable image file is produced, the producing party must preserve the integrity of the
17 underlying ESI, i.e., the original formatting, the metadata (as noted below) and, where
18 applicable, the revision history.

19 d. If a document is more than one page, the unitization of the document and
20 any attachments and/or affixed notes shall be maintained as they existed in the original
21 document.

22 e. The parties shall produce their information in the following format:
23 single- page images and associated multi-page text files containing extracted text or with
24 appropriate software load files containing all information required by the litigation support
25 system used by the receiving party.

1 f. The full text of each electronic document shall be extracted (“Extracted
2 Text”) and produced in a text file. The Extracted Text shall be provided in searchable ASCII
3 text format (or Unicode text format if the text is in a foreign language) and shall be named with
4 a unique Bates Number (e.g., the unique Bates Number of the first page of the corresponding
5 production version of the document followed by its file extension).

6 4. De-duplication. The parties may de-duplicate their ESI production across
7 custodial and non-custodial data sources after disclosure to the requesting party, and the
8 duplicate custodian information removed during the de-duplication process tracked in a
9 duplicate/other custodian field in the database load file.

10 5. Email Threading. The parties may use analytics technology to identify email
11 threads and need only produce the unique most inclusive copy and related family members and
12 may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce
13 a less inclusive copy.

14 6. Metadata fields. If the requesting party seeks metadata, the parties agree that
15 only the following metadata fields need be produced, and only to the extent it is reasonably
16 accessible and non-privileged: document type; custodian and duplicate custodians (or storage
17 location if no custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file
18 name; file size; file extension; original file path; date and time created, sent, modified and/or
19 received; and hash value. The list of metadata type is intended to be flexible and may be
20 changed by agreement of the parties, particularly in light of advances and changes in
21 technology, vendor, and business practices.

22 7. Hard-Copy Documents. If the parties elect to produce hard-copy documents in
23 an electronic format, the production of hard-copy documents will include a cross-reference file
24 that indicates document breaks and sets forth the custodian or custodian/location associated
25 with each produced document. Hard-copy documents will be scanned using Optical Character
26 Recognition technology and searchable ASCII text files will be produced (or Unicode text
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format if the text is in a foreign language), unless the producing party can show that the cost would outweigh the usefulness of scanning (for example, when the condition of the paper is not conducive to scanning and will not result in accurate or reasonably useable/searchable ESI).

Each file will be named with a unique Bates Number (e.g., the unique Bates Number of the first page of the corresponding production version of the document followed by its file extension).

D. Preservation of ESI

The parties acknowledge that they have a common law obligation, as expressed in Fed. R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. With respect to preservation of ESI, the parties agree as follows:

1. Absent a showing of good cause by the requesting party, the parties shall not be required to modify the procedures used by them in the ordinary course of business to back-up and archive data; provided, however, that the parties shall preserve all discoverable ESI in their possession, custody, or control.

2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P. 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure where that data is created after a disclosure or response is made (unless excluded under Sections (D)(3) or (E)(1)-(2)).

3. Absent a showing of good cause by the requesting party, the following categories of ESI need not be preserved:

- a. Deleted, slack, fragmented, or other data only accessible by forensics.
- b. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
- c. On-line access data such as temporary internet files, history, cache, cookies, and the like.
- d. Data in metadata fields that are frequently updated automatically, such as last-opened dates (see also Section (E)(5)).

- e. Back-up data that are duplicative of data that are more accessible elsewhere.
- f. Server, system or network logs.
- g. Data remaining from systems no longer in use that is unintelligible on the systems in use.
- h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or from mobile devices (e.g., iPhone, iPad, Android devices), provided that a copy of all such electronic data is automatically saved in real time elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage).

E. Privilege

1. A producing party shall create a privilege log of all documents fully withheld from production on the basis of a privilege or protection, unless otherwise agreed or excepted by this Agreement and Order. Privilege logs shall include a unique identification number for each document and the basis for the claim (attorney-client privileged or work-product protection). For ESI, the privilege log may be generated using available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata provide insufficient information for the purpose of evaluating the privilege claim asserted, the producing party shall include such additional information as required by the Federal Rules of Civil Procedure. Privilege logs will be produced to all other parties no later than 30 days after delivering a production unless an earlier deadline is agreed to by the parties.

2. Redactions need not be logged so long as the basis for the redaction is clear on the redacted document.

3. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

4. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

5. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this

1 proceeding shall not, for the purposes of this proceeding or any other federal or state
2 proceeding, constitute a waiver by the producing party of any privilege applicable to those
3 documents, including the attorney-client privilege, attorney work-product protection, or any
4 other privilege or protection recognized by law. Information produced in discovery that is
5 protected as privileged or work product shall be immediately returned to the producing party,
6 and its production shall not constitute a waiver of such protection.

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8 IT IS SO ORDERED.

9 Dated: this 9th day of August 2021.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE